IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

Crl.Rev.Pet.No. 2126 of 2007()

CRRP.54/2004 of II ADDL. SESSIONS COURT, PALAKKAD
MC.4/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PATTAMBI

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REVN. PETITIONER: RESPONDENT/COUNTER PETITIONER:

P.K.JAYAN, S/O.KUMARAN, KERALA LAKSHMI MILLS, P.O.PULLAZHI, THRISSUR-12.

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA

RESPONDENTS: REVN.PETITIONER/PETITIONER AND STATE:

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1. CHANDRAMATHI, D/O.LATE AYYAPPAN, AAVAKKAD VEEDU, THATTHANAMPULLI DESOM, CHUNDAMPATTA AMSOM, OTTAPALAM TALUK.

2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.P.CHANDRASEKHAR
BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON 18/07/2007 PASSED THE FOLLOWING:

V. RAMKUMAR, JUDGE.

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CRL. R.P. NO. 2126 OF 2007

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DATED: 18-07-2007

ORDER

The revision petitioner who was the counter petitioner in M.C. 4 of 2000 on the file of the J.F.C.M. Pattambi challenges the appellate order dated 7-7-2005 passed by the II Addl. Sessions Judge, Palakkad in Crl. R.P. 54 of 2007 awarding maintenance to the first respondent herein at the rate of Rs. 500/- per month from the date of petition namely 17-1-2000 onwards.

2. Assailing the appellate order passed by the Addl. Sessions Court, the learned counsel appearing for the revision petitioner made the following submissions before me:-

The revision petitioner (Jayan) examined as C.P.W1 has married C.P.W.2 (Usha) on 12-9-1989 and two children also have been born in that wedlock. The first respondent herein (Chandramathi) was the applicant for maintenance. She was examined as P.w.1. She belongs to the Kanakkan Community. The revision petitioner belongs to the Nair Community. P.W.1 was admittedly a Peerless Agent.

According to P.W.1, the revision petitioner married her on 10-10-1997 and P.W.1 claims to have resided in the house of the revision petitioner for one year. In spite of that she does not correctly know the name of the revision petitioner's father. His name is actually Kunhappan. But P.W.1 would say that his name is Kumaran which is the name shown in Ext.P3 marriage certificate also. P.w.2 is a person who allegedly attended the 2nd marriage of the revision petitioner. He does not know the requisites of a valid marriage. P.W.3 is the paternal uncle of P.w.1. The marriage was allegedly conducted at his instance. He is ignorant of the rites and ceremonies of marriage. The evidence of the revision petitioner examined as C.P.W.1 and the evidence of his wife examined as C.P.W.2 will clearly show that the revision petitioner has married only once and the said marriage is subsisting. When there is no evidence to discard the first marriage, the lower appellate court was not justified in finding a marriage between the revision petitioner and the first respondent. Ext.P2 letters which are five in number are not letters which have been proved to have been written by the revision petitioner. The conclusion reached by the lower appellate court overlooking these vital aspects cannot be supported.

3. I am afraid that I cannot agree with the above

aspects. Except the self interested testimony of the revision petitioner examined as C.P.W.1 and his alleged wife Usha examined as C.P.W.2 no document was produced from the side of the revision petitioner to prove his marriage with C.P.W.2. Eventhough C.P.W.2 testified before Court that there are documents to prove her marriage with the revision petitioner none of those documents was produced. Merely because Exts. D1 and D2 birth certificates of two male children by name Jishin and Jithin showed that the parents of those children are Jayan and Usha, it could not be straightaway concluded that C.P.W.2 was the legally wedded wife of the revision petitioner. As against this, the first respondent herein examined as P.W1 deposed before court that she married the revision petitioner on 10-10-1997, that prior to the marriage both of them were having a love affair evidenced by Ext.P2 series of letters written by the revision petitioner to her and that Ext.P3 is the marriage certificate evidencing their marriage. Ext.P2 series of letters consist of five letter allegedly sent by the revision petitioner to P.W.1 expressing his ardent love towards her. From the name "Jayanthi" written on the outer cover it is quite possible to infer that he was trying to suppress his identity by presumably masquerading himself as a female friend of Chandramathi (P.W.1). P.W.2 was the President of the

Grama Panchayath who had allegedly participated in the marriage between the revision petitioner and P.W.1. P.W.3 deposed that he was instrumental for the marriage between P.W.1 and C.P.W.1. P.W.4 functioned as the "ഇണങ്ങൻ" (best man at the marriage). P.w.5 was the Secretary of the Grama Panchayath who proved Ext.P3 marriage certificate evidencing the marriage of the revision petitioner with the first respondent. The said certificate has been issued under the Hindu Marriage Act by the competent authority. P.w.6 is the Secretary who registered the marriage. He also testified in accordance with the apparent tenor of Ext.P3 certificate.

4. It was after an anxious re-appraisal of the oral and documentary evidence in the case that the learned Addl. Sessions Judge came to the finding that there was no legal evidence before court in support of the marriage between the revision petitioner and C.P.W2 and that the evidence on record was sufficient to prove a valid marriage between the revision petitioner and the first respondent. The grounds urged in support of the revision petitioner are not sufficient to offset the finding recorded by the revisional court below.

5. With regard to the means of the revision petitioner also, it was taking note of his own admission that he has a

monthly income of Rs. 4,000/- that the revisional court below awarded a sum of Rs. 500/- from the date of petition. The said finding also cannot be said to be illegal or unsustainable.

In the result, this revision which is devoid of any merit is dismissed confirming the order for maintenance passed by the revisional court below.

V. Ramkumar, Judge.

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